

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Special Meeting

July 24, 2014

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Sullivan, Mr. Henry and Mr. Delia. Mr. Boyer and Mr. Siburnn were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Applications for Review:

App.#18-14: Jonell Associates Development, 73 Hillside Ave., Bl.2506, L.21 (R-15 Zone)

Applicant is proposing to demolish the existing single family dwelling and construct a new single family house on the lot. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for exceeding the permitted building coverage and total lot coverage limits as well as Section 3.1.8 "Decks" because the proposed deck does not comply with the required 30 ft. rear yard setback. Nonconforming issues are lot area and lot width.

Paul Weeks, attorney for the applicant, stated that the applicant is proposing to demolish the existing house on the property and construct a new house. He is requesting variances for the building coverage, lot coverage and rear set back. The applicant believes that the new home will be a great improvement to the neighborhood. The lot is undersized with only 12,000 square feet where 15,000 is required.

Nicholas Ciraco, 144 Garfield Street, Berkeley Heights, shareholder of Jonell Associates, was sworn. In response to questions from the Board, Mr. Ciraco stated that the proposed house will be 3,527 square feet. The existing home has a 30' front yard setback and the proposed house will be at 50'. The driveway is the cause of the excess impervious coverage. The front of the property is sloped but the backyard is flat. The lots on both sides of the property are developed.

Mr. Ciraco presented Exhibits A-1 through A-4 – photographs of the property showing the view on the left side, the right side, the front and the rear.

Mr. Ciraco stated that the proposed house will be a two-story colonial, with 4-5 bedrooms and with the front façade being partial stone and partial siding. There will only be one kitchen and no separate entrances. The deck will be approximately 4' off the ground. There are two trees under 8" that will be removed and one tree that will stay. The front setbacks of the neighboring houses are 30' for the house on the left and 50' for the house on the right.

Discussion took place regarding the proposed 50' setback for the new house and it was suggested that 40' would eliminate the variance for the rear setback. It was determined that 50' would probably be best in view of the setbacks on the rest of the street.

Mr. Ciraco further stated that the neighbor to the rear of the property is not close to the property line, the highest point of the house will be 28' where the ordinance requires less than 30', drainage will be treated with dry wells and he will take the Environmental Commission's recommendations into consideration.

Open to Public

The hearing was opened to the public for questions or comments regarding the application.

Rich Bower, 89 Hillside Avenue, asked if the exterior of the house will be stucco as shown on the plans. He does not think stucco will fit in with the neighborhood and suggested that materials consistent with the neighborhood be used.

Mr. Ciraco stated that he will use stone and siding, not stucco.

Robert Brown, 65 Hillside Avenue, asked about grading of the property and whether removal of the existing concrete driveway will impact run off.

Mr. Ciraco stated that the run off will be the same but instead of a concrete driveway there will be grass which should absorb more water than the concrete.

It was noted that the drainage and grading will be subject to review by the Township Engineer.

Mr. Ciraco asked if a patio with pavers would increase the impervious coverage and he was advised that pavers are considered impervious and the deck would be better.

A motion was made by Mr. Sullivan, seconded by Mr. Delia, to approve Application #18-14: Jonell Associates Development, 73 Hillside Ave., Bl. 2506 Lot 21 (R-15 Zone) including variances for building coverage and total lot coverage, subject to the conditions as discussed including standard deck conditions, maximum height per the ordinance, no stucco for exterior, removal of the concrete driveway and removal of demolition debris, and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Sullivan, Mr. Henry, and Mr. Delia voting in favor.

App.#20-14: Berkeley Square, LLC, 260-264 Springfield Avenue, Block 801, Lots 23 & 24

Applicant is appealing and requesting reversal, pursuant to N.J.S.A. 40:55D-70 (a), of the Determination of the Zoning Officer to deny a Zoning Permit due to the number of parking spaces allocated to the Mara's Café & Bakery use in Unit 1 of Building II. Also requesting an Interpretation, pursuant to N.J.S.A. 40:55D-70 (b), that the Applicant's proposed parking spaces conform to the applicable Zoning Ordinance requirements and/or comply with Board of Adjustment Resolution Case No. 18-12 regarding same. In the event the appeal and interpretation relief is denied, then the Applicant alternatively requests a variance, pursuant to N.J.S.A. 40:55D-70 (c), for approval of the proposed 30 onsite parking spaces to serve the proposed café and bakery (restaurant and retail use), retail clothing store and an unknown tenant in Unit 2, despite the Zoning Officer's determination that more than 30 parking spaces are required in accordance with the Resolution of Approval. Finally, the Applicant requests all such other variance, waiver, exceptions and/or other relief from the Land Use/Zoning Ordinances as may be deemed necessary or required at the time of the hearing of this matter. (R-15 and HB-2 Zones)

James Webber, attorney for the applicant, stated that the applicant is requesting an interpretation regarding the parking requirements for the proposed Mara's Bakery and Restaurant. The zoning officer has established that 28 parking spaces

are required. The applicant believes that if the shopping center designation is used the requirement would be 21 spaces. Mr. Webber stated that throughout the resolution of approval there are references to the property as a shopping center.

Michael Mistretta, Township Planner, was sworn, gave his professional and educational background and was accepted as an expert witness. Mr. Mistretta stated that he has been involved in this application from the beginning and from day one he has known the property to be a retail store. In the application the applicant identifies it as children's day care and retail store. The site plan identifies this as a one story retail building just over 7,000 square feet and during the approval process it was reduced to 6,000 square feet. The Township Master Plan recognizes two shopping centers in the Township, Berkeley Shopping Center and Kings Shopping Center. Both are located in the downtown development district. Mr. Mistretta stated that in his opinion, this is a retail store.

Mr. Webber cited a number of references in the approval resolution where the property was described as a shopping center and noted that throughout the resolution the property was alternatively identified as a shopping center and as a retail store.

Mr. Bernstein noted that the term "shopping center" was used loosely in the resolution. According to the International Council of Shopping Centers definition of shopping center, the smallest shopping center is typically 50,000 square feet. In his opinion this is not a shopping center entitled to shopping center standards.

Mr. Webber stated that what is being discussed is the need for three off-site parking spaces. There are 30 spaces available and the proposed Mara's Bakery would require 28 spaces, leaving only 2 spaces for the remaining retail unit. Two spaces would not be sufficient for a 1,500 square foot retail unit.

Brian Silbert, owner of Berkeley Square, LLC, was sworn and stated that he has been developing shopping centers all over New Jersey since 1983 and his company owns numerous shopping centers and manages hundreds of tenants. He believes the proposed Mara's Bakery and Restaurant is an excellent tenant for this site. They have reduced their seating to accommodate the parking issue. Mr. Silbert further stated that he has two other shopping centers that contain day care centers with similar restaurants and they do not have any parking issues. Primrose has 290 schools and none of them are open on the weekend and most of the children are out of the facility by 5:30 p.m. and the employees are out by 6:30 p.m. They have four events each year – Christmas, graduation, back to school and Halloween.

Open to Public

The hearing was opened to the public for questions or comments regarding Mr. Silbert's testimony.

Jeffrey Pocaro, attorney representing Marcello Cavallero, owner of the adjacent property, Marcello's restaurant, asked where Mr. Silbert's company owns or manages the smallest and largest centers. He also asked what number of seats was originally proposed for Mara's.

Mr. Silbert stated that they own or manage a 7,000 square foot center in Sparta and a 100,000+ square foot center in Marlboro. The original number of seats was 52 and it has been reduced to 40.

Mr. Pocaro asked where the proposed additional parking spaces are located.

Mr. Silbert stated that they may be able to use three parking spaces on the property across the street owned by Mr. Bol.

Mr. Pocaro asked if they are concerned about people jaywalking to get to Mara's and if the applicant had considered renting spaces next door at Marcello's.

John Rocker, co-owner of Berkeley Square, LLC, was sworn and stated that he had a conversation with Mr. Cavallero about leasing parking spaces. They never presented anything formally to Mr. Cavallero and nothing formal was ever proposed. Mr. Silbert stated that he spoke to Mr. Cavallero who said he was not able to help with the parking. Mr. Bol offered spaces for overflow parking and a license agreement was entered into with him.

Mr. Mistretta noted that the applicant has satisfied the overflow parking requirements. The issue being discussed now is with regard to the parking required for the site. The number of spaces required for the third unit would depend on the use.

Alexander Bol, 251 Springfield Avenue, was sworn and stated that he has agreed to lease three parking spaces to the applicant through a 20 year lease subject to 120 days' notice of termination.

Discussion took place with regard to the lease of the parking spaces from Mr. Bol, Mr. Bol's property, the number of spaces required for his use, whether or not there is room for creation of three parking spaces, the termination provision on 4 months' notice and whether there is other property that could be leased.

Marcello Cavallero, 268 Springfield Avenue, was sworn and stated that he was approached regarding the parking and he said no. He does not wish to provide three parking spaces.

Mr. Bol stated that there is a paved area where he and his employees park and they have never used all the spaces in the parking lot. He wants the ability to terminate the agreement in case something happens to him or he decides to sell the property. He is concerned that the lease for the three spaces would affect the value of the property.

Mr. Webber indicated that Mr. Silbert would be willing to construct additional parking spaces on Mr. Bol's property.

Following discussion Mr. Bol agreed that the notice period would be one year during the first five years of the agreement and 120 days after 5 years.

Mr. Mistretta advised that based on his calculations, 14.28 spaces are required for Mr. Bol's use. There are 15 spaces so there is one extra. There appears to be room for two additional spaces to be constructed.

Mr. Silbert suggested that the spaces be shown on the plan as "banked" spaces to be constructed as actual spaces when they are deemed to be needed.

Mr. Mistretta suggested that the banked spaces be shown on the plans for the Primrose property rather than across the street on Mr. Bol's property. He noted that he would prefer to keep the greenery on the property and just bank the spaces.

Discussion took place regarding the third unit and what kind of tenant would only require the limited number of parking spaces. Mr. Silbert stated that the use for the third unit will only be for general retail and they would be willing to waive the right to request a future variance.

Mr. Bernstein noted that the applicant will only have use of the third unit for storage until the two spaces are banked. The applicant must file an amended application for those banked parking spaces.

Open to Public

The hearing was opened to the public for questions or comments regarding the application.

Mr. Pocaro stated that his client's position is that the spaces should be constructed now. He and his client will be present for the amended application.

Mr. Bernstein stated that he will advise the zoning officer of the Board's action regarding Mara's and the third unit. What he does with that information is up to him since the Board does not control the zoning officer.

A motion was made by Mr. Henry, seconded by Mr. Smith, with respect to Application #20-14: Berkeley Square, LLC, 260-264 Springfield Avenue, Block 801, Lots 23 & 24 to approve the operation of the Mara's Bakery with the contingency that the third unit not be used pending further action by the Board since there are only two excess parking spaces, which is not enough for any use, with the applicant having the right to apply to the Board for use of the third unit, subject to the conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Sullivan, Mr. Henry, and Mr. Delia voting in favor.

Adoption of Resolution:

App.#17-14: Victoria DiSanto, 564 Snyder Avenue, Block 2301, Lot 35 (R-15 Zone)

Proposed second-story addition requires a variance because the front-yard setback will be less than the required 50'. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for the setback and Section 8.1.1B.1 for the expansion of a nonconforming structure. Nonconforming issues are existing principal front-yard setback and a driveway that is less than 5 feet from the property line.

A motion was made by Mr. Smith, seconded by Mr. Henry, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Smith, Mr. Henry, and Mr. Delia voting in favor.

Adoption of Minutes

June 26, 2014 - The minutes were tabled.

Adjournment:

A motion was made by Mr. Smith, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:30 PM.

Regina Giardina, Secretary Pro Tem